

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSEPH RODRIGUEZ,

Plaintiff,

-against-

NEW YORK CITY, et al.,

Defendants.

21-CV-7037 (LTS)

ORDER

LAURA TAYLOR SWAIN, Chief United States District Judge:

By order dated September 20, 2021, the Court dismissed the complaint under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim, and the Clerk of Court entered judgment on the same day. (ECF 5, 6.) On October 27, 2021, the Court received from Plaintiff a notice of appeal (ECF 8) and a motion for an extension of time to file a notice of appeal (ECF 7). For the reasons set forth below, the Court grants Plaintiff's motion for an extension of time to file a notice of appeal.

DISCUSSION

A litigant has 30 days from the entry date of the order or judgment he wishes to challenge to file a notice of appeal. Fed. R. App. P. 4(a)(1)(A). The Court entered its order of dismissal and judgment on September 20, 2021, and Plaintiff had until October 20, 2021, to file a notice of appeal. Because Plaintiff did not file his notice of appeal until October 27, 2021, his notice of appeal is untimely.

Under Rule 4(a)(5) of the Federal Rules of Appellate Procedure, however, a litigant may seek an extension of time to file a notice of appeal. The motion for an extension of time must be filed within 30 days of the expiration of the period to file a notice of appeal and must also show excusable neglect or good cause. Fed. R. App. 4(a)(5)(A)(i), (ii). Plaintiff had until November

19, 2021, to file a motion for an extension of time. Plaintiff timely filed his motion on October 27, 2021.

Plaintiff has also established good cause for failing to file a timely notice of appeal. Plaintiff alleges that he “is imprisoned and anticipated being transferred then released,” and therefore, his “ability to file a timely appeal may become an issue.” (ECF 7.)

The Court therefore grants Plaintiff’s motion for an extension of time to file a notice of appeal.

CONCLUSION

The Court grants Plaintiff’s motion for an extension of time to file a notice of appeal. (ECF 7.)

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket.

SO ORDERED.

Dated: December 6, 2021
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge